

APPEAL NO. 022493
FILED NOVEMBER 7, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 5, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second quarters, and that if the claimant were otherwise entitled to SIBs for the second quarter, the respondent (carrier) would not be liable for benefits from March 22 to April 23, 2002, because the Application for [SIBs] (TWCC-52) for the second quarter benefits was not filed with the carrier until April 23, 2002. The claimant appeals and the carrier responds, urging affirmance.

DECISION

Affirmed.

We have reviewed the complained-of determinations and find that the hearing officer's Decision and Order is supported by sufficient evidence to be affirmed. Whether or not the claimant is entitled to SIBs for the first and second quarters presented questions of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed issues. Simply stated, the hearing officer determined that the claimant's documentation of his self-employment efforts was insufficient to meet his burden of proof for entitlement to first and second quarter SIBs. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Although other fact finders may have arrived at different conclusions, nothing in our review of the record reveals that the hearing officer's determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Further, the claimant appeals the hearing officer's determination that the carrier would not be liable for benefits from March 22 to April 23, 2002, because the application for the second quarter benefits was not filed with the carrier until April 23, 2002. First, this issue is moot because we have affirmed the hearing officer's determination of no entitlement to SIBs for the second quarter. Second, the hearing officer noted that the "claimant had a TWCC-52 in time to complete it and file a copy with the Ombudsman on March 19, 2002." The claimant argues that the application was not timely filed with the carrier because a Texas Workers' Compensation Commission employee did not send the application to the carrier on time. We note that the 1989 Act places the requirement for filing the TWCC-52 with the carrier squarely on the claimant (Section 408.143(a)),

not on someone assisting the claimant. Section 408.143(c) specifically provides that the failure to file a TWCC-52 relieves the carrier of liability for SIBs for the period during which a statement is not filed.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ELECTRIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201-0729.**

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge